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STB Docket No. AB-68 (Sub-No. 4X), Lake Superior & Ishpeming Railroad Company –Abandonment Exemption–in Marquette County, MI.

Good Morning Chairman Nober, Vice Chairman Mulvey, and Commissioner Buttrey.

The draft decision before you grants a petition filed by Lake Superior & Ishpeming Railroad Company (Lake Superior), for reconsideration of a Board decision rejecting a petition for exemption under section 10502 from the prior approval requirements of section 10903.

On May 11, 2004, Lake Superior filed a petition seeking an exemption to abandon a line of railroad known as the Republic Subdivision, extending from LS&I Jct. near Negaunee, MI, to Republic Mine near Republic, MI, a distance of approximately 25 miles in Marquette County. The Subdivision is comprised of three segments. In its petition for exemption, Lake Superior indicated that it owns a one-third interest and Canadian National Railway Company (CN) owns a two-thirds interest in the first segment. Lake Superior stated that, as per the parties' agreement, if Lake Superior were to abandon its use of the track, and CN desired to continue to use the track, CN would have to purchase Lake Superior's one-third interest. Lake Superior further stated that it wholly owned the second and third segments, with CN holding trackage rights authority over the second segment. As to that segment, Lake Superior asserted that the parties' trackage rights agreement expressly reserves to Lake Superior the right to abandon the segment, subject to a CN option to purchase it. Lake Superior stated at the time that it had not received any response from CN regarding its intentions in these matters.

By decision served May 26, 2004, the Board's Director of the Office of Proceedings

rejected the petition in its entirety. Because CN holds the majority interest in the first segment, the Director concluded that CN's absence as a party here meant that the agency could not process the abandonment request as to that segment, and that, because Lake Superior sought abandonment authority for the entire line (all three segments), the request could not be processed as filed.

Lake Superior subsequently filed a petition for reconsideration and for other relief on grounds of material error and changed circumstances. As to changed circumstances, Lake Superior states that CN has now advised it that CN would like additional time to pursue a possible alternative to purchasing the second segment. Lake Superior states that CN is seeking an arrangement with a short line carrier now operating in the area that would provide an alternative route for the overhead traffic that CN is now handling on this segment. Lake Superior indicates that it has advised CN that it is willing to defer temporarily its proposed abandonment of this segment in exchange for CN's commitment to evaluate the alternatives that are available to it and to notify Lake Superior within a reasonable time how it desires to proceed.

Consistent with the accommodation that has been reached with CN, Lake Superior seeks vacation of the May 26 decision, reinstatement of its petition for exemption, permission to withdraw its abandonment exemption request as to segments one and two, and publication of notice of its revised exemption request, so that the Board would proceed to consider Lake Superior's request for authority to abandon segment three.

The draft decision before you would find no material error on the Board's part in having rejected the petition for exemption in its entirety. The draft would, however, grant reconsideration and the other relief sought by Lake Superior on the basis of changed circumstances. The draft would direct that notice of the petition for an exemption to abandon segment three be published in the Federal Register within 20 days from the service date of this decision.

We would be happy to address any questions you might have.

Thank you.